

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EMANUELE STEVENS, individually and on  
behalf of all others similarly situated,

-against-

PEPSICO INC. *et al.*

**Case No. 7:22-CV-00802-NSR**

**JOINT MOTION TO CONSOLIDATE**

**A. SUMMARY**

The Parties jointly request this matter be consolidated with four other matters currently pending before this District: *Marshall v. PepsiCo, Inc.*, No. 7:22-cv-02370-PMH (original proceeding); *Tschudy v. PepsiCo, Inc.*, No. 1:22-cv-04212-ALC (transferred from W.D. Wisc.); *Drobsch v. PepsiCo, Inc.*, No. 1:22-cv-004216-ALC (transferred from W.D. Pa.); and *Smith v. PepsiCo, Inc.*, No. 1:22-cv-04238-NSR (transferred from E.D. Va.). This is the lowest-numbered proceeding in this District, and the first filed of all the cases sought to be consolidated.

This matter, *Marshall*, *Tschudy*, *Drobsch*, *Smith*, and at least 10 other cases against PepsiCo, Inc., Frito-Lay North America, Inc., Frito-Lay, Inc., The Quaker Oats Company, and related entities (together, the “PepsiCo Companies”) all involve allegations (denied by the PepsiCo Companies) that the PepsiCo Companies violated the FLSA and state wage-and-hour laws in the wake of the outage of their Kronos payroll system beginning in December 2021.<sup>1</sup> The parties in these first five matters are the only ones currently pending in this District.

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<sup>1</sup> That is, *King v. PepsiCo, Inc.*, No. 4:22-cv-00360-KGB (E.D. Ark.); *Mitchell v. PepsiCo, Inc.*, No. 3:22-cv-00421-TJC-JBT (M.D. Fla.); *White v. PepsiCo, Inc.*, No. 1:22-cv-02066 (N.D. Ill.); *Poulson v. PepsiCo, Inc.*, No. 1:22-cv-00725-RLY-DML (S.D. Ind.); *Irving-Millentree v. PepsiCo, Inc.*, No. 4:22-cv-00440-SRC (E.D. Mo.); *Ellis v. PepsiCo, Inc.*, No. 3:22-cv-01895-JMV-LDW (D.N.J.); *Parrish v. Frito-Lay N. Am., Inc.*, No. 4:22-cv-00284-ALM (E.D. Tex.); *Winger v. The Quaker Oats Co.*, No. 1:22-cv-02023 (N.D. Ill.); *Madriz v. PepsiCo, Inc.*, No. 5:22-cv-00549-JGB-KK (C.D. Cal.); and *Vidaud v. PepsiCo, Inc.*, No. 5:22-cv-02713-JGB-KK (C.D. Cal.).

As other matters are transferred to the Southern District of New York, the Parties will request their consolidation into this matter as well.

The employee-plaintiffs in these related matters have entered a comprehensive settlement with the PepsiCo Companies that, upon its final approval, will fully and finally resolve all these outstanding wage-and-hour claims against the PepsiCo Companies. ECF No. 30.

As part of that settlement, the parties agreed that the various matters would be consolidated and that preliminary and final approval of the comprehensive settlement is sought in this case, which is the lowest-numbered and first-filed cause related to the settlement.

**B. ARGUMENT & AUTHORITIES**

The Court has discretion to consolidate any matters involving common questions of law or fact. Fed. R. Civ. P. 42(a). “Differences in causes of action, defendants, or the class period do not render consolidation inappropriate if the cases present sufficiently common questions of fact and law, and the differences do not outweigh the interests of judicial economy served by consolidation.” *Kaplan v. Gelfond*, 240 F.R.D. 88, 91 (S.D.N.Y. 2007). “Consolidation is appropriate in order to serve the interests of ‘judicial economy’ and ‘to avoid unnecessary costs or delay.’” *In re Facebook, Inc., IPO Securities and Derivative Lit.*, 288 F.R.D. 26, 34 (S.D.N.Y. 2012) (quoting *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284–85 (2d Cir. 1990)).

This case and the other matters to be consolidated all arise from the same questions of law **and** fact. All arise from plaintiffs-employees’ allegations that the PepsiCo Companies failed to properly and timely pay wages and overtime during and after a payroll outage caused by a hack of the PepsiCo Companies’ payroll provider, Kronos, beginning in December 2021.

Likewise, the PepsiCo Companies defenses to the plaintiffs-employees' claims are common across all these matters. And the matters involve collectives and classes that would otherwise substantially overlap.

Setting aside the factual and legal background, however, the parties have reached a single settlement covering all these matters. *See* ECF No. 30. As part of their settlement, in order to facilitate the settlement and its approval, preserve judicial economy, and prevent inconsistent outcomes, the parties agreed to seek consolidation of these matters and, thereafter, to seek approval in a single proceeding. For these reasons, the Court should consolidate these matters into *Stevens*, which is the lowest-numbered and first-filed of the causes.

**C. CONCLUSION**

The Court should consolidate this matter to facilitate a coordinated settlement of similar matters pending against the PepsiCo Companies.

Dated: May 24, 2022

Respectfully submitted,

*/s/ Matthew S. Parmet*

By: \_\_\_\_\_

**Matthew S. Parmet**

TX Bar # 24069719

*(admitted pro hac vice)*

**PARMET PC**

3 Riverway, Ste. 1910

Houston, TX 77056

phone 713 999 5228

[matt@parmet.law](mailto:matt@parmet.law)

**Seth R. Lesser**

**Christopher M. Timmel**

**KLAFTER LESSER LLP**

Two International Drive, Suite 350

Rye Brook, New York 10573  
Telephone: (914) 934-9200  
Email: [seth@klafterlesser.com](mailto:seth@klafterlesser.com)  
Email: [christopher.timmel@klafterlesser.com](mailto:christopher.timmel@klafterlesser.com)

**Joseph F. Scott** (Ohio - 0029780)  
**Ryan A. Winters** (Ohio - 0086917)  
**Kevin M. McDermott II** (Ohio - 0090455)  
(*admitted pro hac vice*)  
**SCOTT & WINTERS LAW FIRM, LLC**  
The Caxton Building  
812 Huron Rd. E., Suite 490  
Cleveland, OH 44115  
P: (216) 912-2221 | F: (216) 350-6313  
[jscott@ohiowagelawyers.com](mailto:jscott@ohiowagelawyers.com)  
[rwinters@ohiowagelawyers.com](mailto:rwinters@ohiowagelawyers.com)  
[kmcdermott@ohiowagelawyers.com](mailto:kmcdermott@ohiowagelawyers.com)

**Andrew R. Frisch, Esq.**  
NY Bar No. 3957115  
**MORGAN & MORGAN, P.A.**  
8151 Peters Road, Suite 4000  
Plantation, FL 33324  
Telephone: (954) 318-0268  
Facsimile: (954) 327-3017  
E-mail: [AFrisch@forthepeople.com](mailto:AFrisch@forthepeople.com)

**Attorneys for Plaintiff**

*/s/ Linda H. Joseph (by permission)*

By: \_\_\_\_\_

**Linda H. Joseph, Esq.**

**Ginger D. Schröder, Esq.**

**SCHRÖDER, JOSEPH & ASSOCIATES, LLP**  
394 Franklin St., 2nd Floor  
Buffalo, NY 14202  
Phone (713) 881-4901  
Fax (716) 881-4909  
[ljoseph@sjalegal.com](mailto:ljoseph@sjalegal.com)

**Alison R. Ashmore**

TX Bar # 24059400

*(admitted pro hac vice)*

**DYKEMA GOSSETT PLLC**

1717 Main St., Ste. 4200

Dallas, TX 75201

Phone: 214 462-6400

Fax: 866 781-2975

[ljoseph@sjalegal.com](mailto:ljoseph@sjalegal.com)

**Attorneys for Defendants**